

EXHIBIT D



T 213.626.8484
F 213.626.0078
E tsmith@rwglaw.com

350 South Grand Avenue
37th Floor
Los Angeles, CA 90071
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March 3, 2023

VIA FEDEX

William Mack
Triple B Mission Viejo, LLC
One Bridge Plaza N Suite 600
Fort Lee, NJ 07024

Richard Biletta
Mack Real Estate Group
60 Columbus Circle, 20th Floor
New York, NY 10023

Re: ***Davaco, Inc. v. Bed Bath & Beyond, Inc. and Triple B Mission Viejo, LLC***
Los Angeles Superior Court Case No. 30-2023-01303137-CU-MC-CJC

Dear Gentlemen:

As you may know, this firm has received copies of the Summons and Complaint filed by Davaco, Inc. on January 19, 2023 against Bed Bath & Beyond and Triple B Mission Viejo, LLC. The process server was apparently directed to serve the Summon, Complaint and accompanying documents at our offices as, unbeknownst to us, Saul Jaffe, an attorney not employed with our firm for more than twenty years, is still listed as the Registered Agent for Service of Process for Triple B Mission Viejo, LLC. In fact, the California Secretary of State Statement of Information erroneously naming "Jaffe-Richards Watson G(sic)" Triple B Mission Viejo, LLC was filed as late as March 6, 2022.

On February 21, 2023, our Records Supervisor, India Luduena, emailed Mr. Biletta copies of the Summons, Complaint, Notice of Case Management Conference, Minute Order advancing the Case Management Conference, Notice of Lis Pendens, and a copy of the Statement of Information. Having received no response to that email, I am writing to advise you that we will be filing paperwork with the Secretary of State to remove us from their records as Registered Agent for Service of Process for Triple B Mission Viejo, LLC.

Meanwhile, we have checked the docket for this case and noted that a response to the Complaint has yet to be filed. Please note that the Case Management Conference is scheduled

William Mack
Richard Biletta
March 3, 2023

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for April 20, 2023 in Orange County Superior Court. I am enclosing the documents originally emailed to you on February 21st.

Very truly yours,


Tracy Smith

Enclosure(s)

cc: (via email only and w/o enclosures)
John R. Heisse
Jessica R. Bogo

89990-0006\2787095v1.doc

1 PILLSBURY WINTHROP SHAW PITTMAN LLP
JOHN R. HEISSE (Bar No. 134964)
2 john.heisse@pillsburylaw.com
JESSICA R. BOGO (Bar No. 275772)
3 jessica.bogo@pillsburylaw.com
Four Embarcadero Center, 22nd Floor
4 San Francisco, CA 94111-5998
Telephone: 415.983.1000
5 Facsimile: 415.983.1200

6 Attorneys for Plaintiff
7 DAVACO INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE
10

11 DAVACO INC., a Texas corporation;

12 Plaintiff,

13 vs.

14 BED BATH & BEYOND, INC., a New York
corporation; TRIPLE B MISSION VIEJO, LLC,
15 a Delaware limited liability company; and
DOES 1 through 50, inclusive,

16 Defendants.
17
18
19

Case No. 30-2023-01303137-CU-MC-CJC

**ASSIGNED FOR ALL PURPOSES TO
JUDGE MELISSA R. MCCORMICK**

**NOTICE OF PENDING ACTION
(*Lis Pendens*)**

Complaint Filed: January 19, 2023

20
21 PLEASE TAKE NOTICE that a lawsuit concerning and affecting title and/or possession to
22 real property as described herein was commenced in the above-captioned court on January 19, 2023
23 and is now pending between Plaintiff Davaco Inc. and Defendants Bed Bath & Beyond, Inc., Triple
24 B Mission Viejo, LLC, and Does 1 through 50, inclusive.

25 The operative Complaint alleges a claim affecting real property, to wit enforcement of a
26 Mechanic's Lien recorded on November 8, 2022, against real property located at 25732 El Paseo,
27 Mission Viejo, CA 92691, including but not limited to the following Orange County Assessor Parcel
28 Information Number: 784-661-42.

1 A copy of the Proof of Service is attached hereto and incorporated herein by reference.

2
3 Dated: February 6, 2023

PILLSBURY WINTHROP SHAW PITTMAN LLP

4
5 By: _____
JESSICA R. BOGO

6 Attorneys for Plaintiff
7 DAVACO INC.
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PROOF OF SERVICE

I, **Yvonne Chen** the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the County of San Francisco, State of California.

2. My email and business address are **yvonne.chen@pillsburylaw.com**; Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998.

3. My mailing address is P. O. Box 2824, San Francisco, CA 94111-5998.

4. On February 6, 2023, I served the document(s) titled exactly **NOTICE OF PENDING ACTION (*Lis Pendens*)** on the following recipients:

BED BATH & BEYOND INC.
C T Corporation System
Attn: Amanda Garcia or Any Other Authorized Employee
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

TRIPLE B MISSION VIEJO, LLC
Richards Watson & Gershon
Attn: Saul Jaffe
333 South Hope Street
Los Angeles, CA 90071

☒ **(BY CERTIFIED MAIL)** I caused each envelope, with postage thereon fully prepaid and certified-return receipt requested, to be placed in the United States mail at San Francisco, CA. I am readily familiar with the practice of Pillsbury Winthrop Shaw Pittman LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

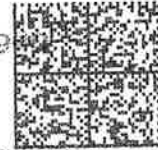
I declare under penalty of perjury that the foregoing is true and correct. Executed this **6th** day of **February, 2023**, at San Francisco, California.

Yvonne Chen

CERTIFIED MAIL



CA 94111-5998
3L



US POSTAGE PAID BY PITNEY BOWES

ZIP 94111 \$ 008.34⁰
02 4W
0000381709 FEB 06 2023

7019 1120 0000 6932 3192

RECEIVED

FEB 09 2023

FILE ROOM M.T.

5

Saul Jaffe

TRIPLE B MISSION VIEJO, LLC

Richards Watson & Gershon

333 South Hope Street

Los Angeles, CA 90071

90071-140699



ry

op Shaw Pittman LLP

ero Center, 22nd Floor | San Francisco, CA 94111-5998

RESS: P. O. Box 2824 | San Francisco, CA 94126-2824

Electronically Filed by Superior Court of California, County of Orange, 01/19/2023 10:15:38 PM.
30-2023-01303137-CU-MC-CJC - ROA # 4 - DAVID H. YAMASAKI, Clerk of the Court By A. Van Arkel, Deputy SUM-100

**SUMMONS ON COMPLAINT
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

BED BATH & BEYOND, INC., a New York corporation; TRIPLE B MISSION VIEJO, LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DAVACO INC., a Texas corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701
Central Justice Center

CASE NUMBER: 30-2023-01303137-CU-MC-CJC
(Número del Caso):

Assigned for All Purposes to:

Judge Melissa R. McCormick

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JOHN R. HEISSE (Bar No. 134964) (415) 983.1000

JESSICA R. BOGO (Bar No. 275772)

PILLSBURY WINTHROP SHAW PITTMAN LLP

Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998

David H. Yamasaki, Clerk of the Court

DATE:

(Fecha) 01/19/2023

Clerk, by

(Secretario)

A. Van Arkel

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

- under:
- ☐ CCP 416.10 (corporation)
 - ☐ CCP 416.20 (defunct corporation)
 - ☒ CCP 416.40 (association or partnership)
 - ☐ other (specify):

- ☐ CCP 416.60 (minor)
- ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Triple B Mission Viejo LLC a Delaware limited liability company

30-2023-01303137-CU-MC-CJC - ROA # 2 - DAVID H. YAMASAKI, Clerk of the Court By A. Van Arkel, Deputy Clerk.
Electronically Filed by Superior Court of California, County of Orange, 01/19/2023 10:15:38 PM.

PILLSBURY WINTHROP SHAW PITTMAN LLP
JOHN R. HEISSE (Bar No. 134964)
john.heisse@pillsburylaw.com
JESSICA R. BOGO (Bar No. 275772)
jessica.bogo@pillsburylaw.com
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
Telephone: 415.983.1000
Facsimile: 415.983.1200

Attorneys for Plaintiff
DAVACO INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

DAVACO INC., a Texas corporation;
Plaintiff,

vs.

BED BATH & BEYOND, INC., a New York
corporation; TRIPLE B MISSION VIEJO, LLC,
a Delaware limited liability company; and
DOES 1 through 50, inclusive,
Defendants.

Case No. 30-2023-01303137-CU-MC-CJC
Assigned for All Purposes to: Judge Melissa R. McCormick
**COMPLAINT FOR (1) FORECLOSURE
OF MECHANIC'S LIEN AND (2)
BREACH OF CONTRACT**

COMES NOW Plaintiff Davaco Inc. and complains against the Defendants named herein as follows:

The Parties

1. At all times relevant Plaintiff Davaco Inc. ("Plaintiff") was and is a Texas corporation, organized and existing in compliance with law, and authorized to do business and doing business in the County of Orange, State of California.

2. At all times relevant Plaintiff was and is licensed by the California Contractors State

1 License Board as a general building contractor and authorized by law to act in all respects as alleged
2 herein.

3 3. Plaintiff is informed and believes and on that basis alleges that at all times relevant
4 Defendant Bed Bath & Beyond, Inc. ("BBB") was and is a New York corporation doing business in
5 the County of Orange, California with an ownership interest in the certain parcel of land located at
6 25732 El Paseo, Mission Viejo, CA 92691, APN No. 784-661-42 ("Property").

7 4. Plaintiff is informed and believes and on that basis alleges that at all times relevant
8 Defendant Triple B Mission Viejo, LLC ("Triple B") was and is a Delaware limited liability
9 company and an owner of the Property.

10 5. At this time Plaintiff does not know the true names and capacities of Defendants Does
11 1 through 50, inclusive ("Does 1-50"), and therefore sues them under fictitious names pursuant to
12 Code of Civil Procedure § 474. Plaintiff is informed and believes that each fictitiously named
13 Defendant is responsible in some manner for the acts and occurrences alleged herein, and that each
14 fictitiously named Defendant is therefore jointly and severally liable to Plaintiff for the damages
15 suffered by the Plaintiff as hereinafter set forth. Plaintiff will seek leave of court to amend this
16 Complaint once the true and correct identities of the fictitiously named Defendants. Unless otherwise
17 stated, any mention of, reference to or allegation against any named Defendant in a cause of action
18 stated in this Complaint, is intended to include and apply to all of the fictitiously-named Defendants
19 identified in or for that cause of action.

20 6. Plaintiff is informed and believes, and on that basis alleges that each of the
21 Defendants herein is and was at all times relevant the agent, representative and/or employees of one
22 another, and was acting within the course and scope of said agency, representation and/or
23 employment and was acting with the knowledge and consent of each of the remaining Defendants
24 and under their direct supervision and control.

25 **Jurisdiction and Venue**

26 7. Jurisdiction is proper in the Superior Court of California, as the action concerns a
27 contract entered into and performed in the State of California, and subject to California law, to
28 construct the work of improvement referred to below.

8. Venue is proper in this Court, as the contract at issue was entered into and performed in Orange County, and concerns a work of improvement on and to a certain parcel of land located in the City of Mission Viejo, County of Orange.

The Project

9. The work of improvement which is the subject of this Complaint is the interior and exterior remodeling of a single Bed Bath & Beyond Store No. 275 ("Project"), located on the Property.

10. On or about March 7, 2022, Plaintiff, as contractor, and BBB, as owner, entered into a direct written contract ("Contract"), pursuant to which Plaintiff would construct the Project and BBB would pay Plaintiff the base bid fee of \$276,495.00, plus adjustments and additional work for a total contract amount of \$343,380.00. Pursuant to the Contract, BBB was to pay Plaintiff the entire amount remaining to be paid within thirty (30) days after certain conditions in Paragraph Four of the Contract had been met. A copy of the Contract without attachments is attached hereto as **Exhibit 1**.

11. Plaintiff fully performed its legal and contractual obligations except as said performance was waived, excused or prevented by BBB.

12. Plaintiff has completed the Contract. BBB has not recorded a Notice of Completion and has failed to provide Plaintiff compensation pursuant to the Contract within the provided thirty-day period. Plaintiff is entitled to compensation for all work performed under the Contract, in the total amount of \$343,380.00. There is now due and remaining from BBB to Plaintiff the amount of no less than \$343,380.00 together with interest thereon at the highest rate permitted by law (after deducting all just credits and offsets) for labor, services, equipment and/or materials furnished by Plaintiff for the Project. BBB's failure and refusal to pay Plaintiff the amounts properly due for work on the Project constitutes a material breach of the Contract.

First Cause of Action

(Foreclosure of Mechanic's Lien Against BBB, Triple B, and Does 1-50, inclusive)

13. Plaintiff alleges and incorporates herein each and all of the allegations of paragraphs 1 through 12, inclusive:

14. At all times relevant, herein mentioned, Defendants were the owner or reputed owner

1 of the Property and Project.

2 15. On or about November 9, 2022, after completion of the Contract and within the time
3 allowed by law, Plaintiff recorded in the official records of the County of Orange, State of
4 California, its verified Mechanic's Lien as set forth below.

5 16. Plaintiff claims a Mechanic's Lien for labor, services, equipment and/or materials
6 furnished by Plaintiff for the Project. Plaintiff's Mechanic's Lien is in the amount of \$343,380.00,
7 which was the reasonable value of all labor, services, equipment and/or materials furnished by
8 Plaintiff, after deducting all proper credits and offsets at the time. Plaintiff has further incurred
9 indebtedness in the amount necessary to record and verify its Mechanic's Lien and to bring this
10 action. In addition, Plaintiff is due interest and court costs in an amount to be determined. A copy of
11 Plaintiff's Mechanic's Lien as recorded is attached hereto as **Exhibit 2**.

12 17. Plaintiff has complied with all applicable provisions of the California Civil Code
13 required of a mechanic's lien claimant.

14 18. BBB, Triple B, and Does 1-50, inclusive, claim a right, title or interest in or to the
15 subject Property in Plaintiff's Mechanic's Lien. The claim or title or interest of each Defendant is
16 subject, subordinate and inferior to Plaintiff's Mechanic's Lien.

17 WHEREFORE, Plaintiff prays for judgment as set forth below.

18 **SECOND CAUSE OF ACTION**

19 **(Breach of Contract, against BBB and Does 25-50, inclusive)**

20 19. Plaintiff alleges and incorporates herein each and all of the allegations of paragraphs
21 1 through 18, inclusive.

22 20. Plaintiff and BBB entered into the written Contract for construction of the Project on
23 the Property as described above.

24 21. Plaintiff has fully performed all obligations and conditions required of it pursuant to
25 the terms of the Contract, except as said performance has been waived, excused, or prevented by
26 BBB.

27 22. BBB has breached the Contract by, *inter alia*, failing and refusing to pay Plaintiff
28 amounts properly due for work on the Project as described above.

23. As a direct and proximate result of these breaches, and others, Plaintiff has been damaged in the amount of at least \$343,380.00, plus interest and costs.

WHEREFORE, Plaintiff prays for judgment as set forth below.

Prayer for Relief

WHEREFORE, Plaintiff Davaco Inc. prays for judgment against Defendants Bed Bath & Beyond, Inc., Triple B Mission Viejo, LLC, and Does 1 through 50, inclusive, as follows:

On the First Cause of Action for Foreclosure of Mechanic's Lien, against all Defendants:

1. That an amount of not less than \$343,380.00 plus interest and costs be declared to be a lien upon the subject Property described in Plaintiff's Mechanic's Lien that is prior to the claim or interest of any Defendant;

2. That a writ of enforcement issue and that the subject Property described in Plaintiff's lien or as much thereof as may be necessary be sold according to law and the practice of this Court;

3. That the proceeds of the sale be paid to Plaintiff to satisfy its judgment;

4. That each of the Defendants and all the persons claiming under them are subject, subordinate and inferior to Plaintiff's lien, whether as lien claimants, judgment creditors, purchaser or otherwise, and are barred and foreclosed from all rights, claims or equity of redemption in the subject Property described in Plaintiff's Mechanic's Lien;

5. For cost of recording and verifying the Mechanic's Lien;

6. For interest in accordance with law;

7. For costs of suit; and

8. For such other and further relief as the Court may deem proper.

On the Second Cause of Action for Breach of Contract, against Defendants BBB and Does 25 through 50:

1. For damages in the sum of at least \$343,380.00 in accordance with proof;

2. For attorneys' fees in accordance with law;

3. For interest in accordance with law;

4. For costs of suit; and

///

1 5. For such other and further relief as the Court may deem proper.
2
3

4 Dated: January 19, 2023

PILLSBURY WINTHROP SHAW PITTMAN LLP

5
6 By: 
JOHN R. HEISSE
JESSICA R. BOGO

7 Attorneys for Plaintiff
8 DAVACO INC.
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EXHIBIT 1

DocuSign Envelope ID: DEE5EEE7-4FE8-4387-822C-1B84EDC3A326

Construction Agreement

Owner: Bed Bath & Beyond
650 Liberty Avenue
Union, New Jersey 07083

Date: March 7, 2022

(Hereinafter Bed Bath & Beyond)

Contractor: DAVACO, LP
Cara Kapuscinski
4050 Valley View Lane, Suite 150
Irving, Texas, 75038

Instructions:
Invoices must be rendered
to Bed Bath & Beyond

Copy of this Contract bearing the
Signature of an authorized representative
of Bed Bath & Beyond must be attached to the final invoice.

Contractor – Sign electronically or digitally and
Email to Bed Bath & Beyond's office within two (2) days.

(Hereinafter Contractor)

Perform work in accordance with plans/specifications referred

To below at the cost of:

Base Bid:	\$ 276,495.00
Bid Alt #1:	\$ 66,885.00
Total Base Bid:	\$ 343,380.00

The total cost above includes all taxes, including Federal, State, County and City taxes for the remodel work as described below.

Work to be performed at: Bed Bath & Beyond, Store #275
25732 El Paseo
Mission Viejo, CA 92961

Description of Work:

Request for Pricing dated 2/2/2022
Current Phasing Plan dated 3/3/22
Onyx Creative Drawings, see attached Exhibit A
Bid Alt #1 – \$66,885.00, Exterior Elevation Work, Included

Reference is made to your Form of Proposal, Exhibit J, Schedules of Values received on February 28, 2022 and March 3, 2022, including our various telephone conversations, our pre and post bid proposal emails and other documents. Contractor shall execute the entire Tenant Improvement or Remodel Work as described in the site-specific Onyx Creative Drawings, and as detailed within the Other Documents listed above as it relates to the remodel of this open and operating Bed Bath & Beyond store.

Commencement Date of Work: March 27, 2022
Completion Date of Work: May 5, 2022
Remodel Overnight Duration: Six Weeks

(Hereafter in collectively "Work")

Value of any article(s) entrusted by Bed Bath & Beyond
to contractor: N/A

Terms of Payment:

NET THIRTY DAYS Refer to Item #4 on next page.

Accepted/Agreed to: This Agreement is subject to the following Terms and Conditions which comprise an integral part of this Agreement.

DAVACO, LP

BED BATH & BEYOND, INC.

By: 

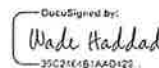
Signature of Contractor


CAB3C7CEFD0402

Michel Bernard

By: 

Stephen Ehrich – Senior Director of Construction
and New Store Development


35C2161B1A4D123

Director of Construction

SVP Real Estate

DocuSign Envelope ID: DEE5EEE7-4FE8-4387-822C-1B84EDC3A326

TERMS AND CONDITIONS

1. Contractor shall furnish all requisite services, materials, equipment, tools and labor to perform the work described on the face hereof (the "*Work*"). The Work shall be performed by skilled workmen in a good and workmanlike manner, shall conform to the plans and specifications, and shall be subject to Bed Bath & Beyond approval. Contractor shall correct, at its expense, any defects in material or workmanship which appears within a period of one (1) year from the date the work is finally accepted by Bed Bath & Beyond. Contractor shall correct any nonconformance or defect in the Work (or replace the equipment where the defect or nonconformity cannot be cured except by replacement), at Contractor's sole cost and expense.

2. Product substitutions are not permitted. Contractor must supply materials from the approved vendors of Bed Bath and Beyond as identified in the plans and specifications. The Contractor shall correct and replace, at its expense, any products or materials not identified in the plans and specifications within a period of one (1) year from the date the work is finally accepted by Bed Bath & Beyond. In the rare circumstance where a product substitution is needed, the Contractor shall obtain prior written authorization from the Executives of Store Development and/or Architecture of Bed Bath and Beyond before ordering any substitute materials.

3. With respect to all materials, equipment, machines, tools, labor and any goods or services which may be required to perform the Work under this contract, Contractor: (A) Shall furnish all of the same unless otherwise specified on the face hereof; (B) Shall obtain and pay for all necessary permits (including building and construction permits) unless otherwise specified on the face hereof; and (C) Warrants that the same shall have been produced or furnished in compliance with all applicable laws and regulations.

4. Upon completion of the Work and final acceptance by Bed Bath & Beyond, title and risk of loss or damage to the Work shall pass to Bed Bath & Beyond. If the Contractor's price is to be paid in more than one installment, Bed Bath & Beyond shall be entitled to retain up to ten percent (10%) of the amount of each installment to insure the faithful performance of the contract and the discharge of all bills, indebtedness and liens. Owner shall pay the entire amount remaining to be paid pursuant to this Agreement, including any retainage, (herein called the "*Final Payment*"), within thirty (30) days after all of the following shall have occurred: (a) Receipt by Owner of a permanent certificate of occupancy (or its local equivalent, if certificate of occupancy are not issued in the jurisdiction) permitting the use of the Project for its intended purposes; (b) Receipt by Owner of the final Draw Request, setting forth the amount of the Final Payment and approved by Owner's Representative; and (c) Receipt by Owner of an affidavit of Contractor that all payrolls, bills for materials and equipment, and the indebtedness connected with the Work for which Owner or his property might in any way be responsible, have been paid or otherwise satisfied, and such other data establishing payment or satisfaction of all such obligations, such as receipts, unconditional releases and waivers of liens arising out of the Contract Documents, to the extent and in such form as may be required by Owner; (d) AIA Document G702-Application and Certificate for Payment and AIA Document G703- Continuation Sheets (herein called "*Draw Request*"); With each Draw Request, Contractor shall submit a Contractor's Sworn Statement, and such other documentation as may be reasonably required by Owner's Representative, together with such waivers and releases of lien as may be satisfactory to Owner; (e) The Contractor will prepare a list all subcontractors, vendors and any direct vendor with interest greater than \$2,000 ("*Subcontractor List*"); this Subcontractor List is to be submitted to Owner with each pay application and the amount paid to date and the current payment due should both agree with the amounts listed on the Unconditional & Conditional Lien Waivers. If any Subcontractor refuses to furnish a release or waiver required by Owner, Contractor, at no cost to Owner, shall

furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien is filed and remains unsatisfied after all payments are made, Contractor shall refund to Owner, promptly on demand, all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fee. The acceptance of Final Payment shall constitute a waiver by Contractor of all claims against Owner arising out of the performance of the Work.

5. Contractor is an independent Contractor and nothing herein contained shall be construed as creating any relationship with Bed Bath & Beyond; nor shall it be construed as creating any relationship between Bed Bath & Beyond and Contractor's employees. Contractor agrees to comply with all laws, rules, regulations and ordinances applicable to it as such employer, including without limitation, the withholding and contribution provision of any law affecting income or payroll of its employees, as well as any applicable state unemployment insurance or compensation act. The Work shall be performed (A) employing persons who are authorized to work in the United States and whose employment is voluntary, and (B) making all provisions necessary to avoid disputes with labor unions and shall be responsible for any delays, damages or extra costs incurred as a result of such disputes. Contractor and any of its subcontractors shall maintain all licenses and certifications required by applicable Federal, State or local law, rule or regulation. Contractor shall cooperate with and work in harmony with all other contractors engaged in work at the site.

6. Contractor assumes all risk of loss of or damage to any articles entrusted to Contractor by Bed Bath & Beyond while in Contractor's possession or under Contractor's control. In the event of loss or irreparable damage to said articles, Contractor shall promptly reimburse Bed Bath & Beyond for the value of the articles. Any other damages to the articles shall be promptly repaired by Contractor at its expense.

7. Contractor shall indemnify, defend and hold harmless Bed Bath & Beyond, and its subsidiaries and affiliates against any and all actions, claims, demands, suits, losses, costs, damages, fines and penalties (except where reimbursement of fines and penalties is prohibited by law), judgments, expense (including reasonable attorney's fees) and causes of action of every kind and character (including those of the parties and their agents and employees) directly or indirectly incurred or to be incurred and arising out of or in connection with the Work by any act or omission of Contractor or any subcontractor, agent, employee, invitee or licensee of Contractor. Bed Bath & Beyond shall cooperate with Contractor, as reasonably requested, in any suit being defended by Contractor hereunder, and Contractor shall not consent to any judgment, order or decree against Bed Bath & Beyond without Bed Bath & Beyond's prior written consent. Contractor shall keep Bed Bath & Beyond fully informed at all times with respect to material developments in all such actions, claims, demands and suits. The terms and conditions of this Section shall survive the expiration or earlier termination of this Agreement.

8. Before commencing any work, Contractor shall provide Bed Bath & Beyond with certificates evidencing the existence of insurance coverage: (A) Statutory worker's compensation and employer's liability of \$500,000; (B) Comprehensive general liability (including contractual and completed operations coverage) of \$1,000,000 combined single limit; (C) Comprehensive automobile liability of \$1,000,000 combined single limit; and, (D) Umbrella liability coverage in an amount not less than \$5,000,000. All such policies shall name Bed Bath & Beyond as an additional insured and shall provide that the insurance will be not canceled or amended without ten (10) days prior written notice to Bed Bath & Beyond. Contractor shall maintain such insurance in effect throughout the term of this contract. Contractor's insurance shall be primary to any insurance maintained by Owner, and any

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TERMS AND CONDITIONS

deductible or self-insurance of Contractor shall not be permitted without the prior written consent of Owner. If requested by Owner, Contractor shall deliver to Owner, in addition to the certificates of insurance, endorsements to Contractors and Subcontractors insurance policies evidencing Owner (and any other designee) as additional insured of the insurance to be maintained hereunder. Neither the purchase of insurance nor the furnishing of evidence of insurance to Bed Bath & Beyond shall be in satisfaction of Contractor's obligations hereunder or in any way modify Contractor's agreement to indemnify Bed Bath & Beyond as contained in Section 7 hereof.

9. For purposes of audit, Bed Bath & Beyond shall have the right, both prior to making any payment to Contractor and until two (2) years after final acceptance of the Work by Bed Bath & Beyond, to examine, either directly or through its authorized representatives or agents, during business hours and for a reasonable length of time, all books, records, accounts, correspondence, instructions, receipts, manuals and memoranda insofar as they are pertinent to this contract and to make copies thereto at Bed Bath & Beyond expense. Bed Bath & Beyond right of audit shall not apply to Contractor's trade secrets or other proprietary information properly designated as such.

10. Bed Bath & Beyond may terminate this contract immediately upon written notice in the event that Contractor shall be in breach of this contract or shall suffer an act of bankruptcy or insolvency, however evidenced. BBB's right of termination shall be in addition to any other rights and remedies that may be available to it under this Agreement, at law or in equity.

11. Any assignment of this contract, or any interest herein or of any money due or to become due to Contractor hereunder and any subcontractor of any part of the Work to be performed hereunder without Bed Bath & Beyond prior written consent shall, at Bed Bath & Beyond option, be null and void. In no case shall any subcontractor relieve Contractor of its liability and obligations under this contract. Except as otherwise provided herein, this contract shall inure to Bed Bath & Beyond and be binding upon the successors and permitted assigns of the parties hereto.

12. This contract contains the entire agreement and understanding of the parties with respect to the subject matter hereof. It may not be amended, added to, or superseded except by a written agreement signed by the parties which expressly refers to this contract and the specific provisions hereof which are affected by such amendment.

13. The failure of either party to insist on the strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that such party may have for any subsequent breach of default and either party's right to insist on strict performance of this contract shall not be affected by any previous waiver or course of dealing.

14. Any invalid or unenforceable provision hereof shall be deemed severed from this contract and the balance of the contract shall be construed and enforced as if the contract did not contain the particular provision held to be invalid or unenforceable.

15. The Contractor and all of its Subcontractors shall be in compliance with and responsible for all rules and regulations provided for or required by the Occupational Safety Health Act (OSHA) of 1970, and all amendments thereto, including, without limiting the generality of the foregoing, the following:

- Toe board protection
- Safety rails
- Rebar caps
- Protection of floor openings

The foregoing provisions shall be in addition to, and not in limitation of, the terms and conditions of the Contract Documents, including, without limiting the generality of the foregoing, the provisions of Paragraph 5 of this agreement.

16. Owner's Code of Ethical Standards and Business Practices and Conduct (the "Policy") requires that the selection of a vendor or other supplier of goods and services to Owner must be based on quality, need, performance and cost. Owner's Policy further prohibits the acceptance from suppliers by Owner's employees or agents of gifts or gratuities, whether in the form of money, merchandise, services, lavish entertainment, travel or any other form. If an employee or agent of Owner shall solicit from Contractor, or any of contractor's employees or agents, any such gifts or gratuities, it shall be Contractor's obligation and responsibility to promptly notify Owner of any such solicitation.

17. This agreement shall be governed by, and construed in accordance with the laws of the state where the project is located.

18. Notwithstanding anything to the contrary herein it is expressly understood and agreed by Contractor that there shall be no personal liability on the part of Owner, its shareholders, directors, officers, employees with respect to any of the terms of this agreement and contractors shall look solely to the interest in the Project for the collection of Contractors claims.

19. Contractor shall remove all rubbish resulting from the performance of the Work on a daily basis, and shall keep all adjacent streets and driveways clear and unobstructed at all times. Upon completion of construction, Contractor shall remove all waste, surplus material, debris, construction equipment, machinery and tools relating to this Contract from the Site and the Project. Adjoining land shall be left in a clean and neat condition. Contractor shall wash and/or clean all floors, walls, ceilings, and both sides of glass and glazing before final acceptance of the Work by Owner.

20. Overhead and profit on all change orders shall be allowed only in accordance with the following schedule:

- (a) Single tier (Contractor only): 5 % upon all materials, labor and/or rentals supplied.
- (b) Double tier (Contractor and Subcontractor) Subcontractor may increase price upon materials, labor and/or rentals supplied by 5%, with the Contractor being permitted a 5% increase thereon (total overhead and profit 10.25%).
- (c) Triple tier Sub-subcontractor may increase price of any materials labor or rentals supplied by 5%. The Subcontractor may increase such price by 5% and the Contractor may thereafter increase such price by 5% (total overhead and profit - 15.76%).

On all Change Orders, labor costs must be shown detailing labor rates for shifts defined by the scope of work.

In determining overhead and profit, the foregoing percentages shall be applied to the net cost of materials, labor and rentals only, and such percentage shall be deemed to include all overhead and profit of every type and nature. The net cost of labor shall include the base wages and ordinary benefits actually paid. Persons performing services (other than so called "trade persons" and "foreman") including but not limited to support and supervisory staff shall not be included in any calculation of the cost of labor and shall be deemed a part of overhead and profit included in the foregoing percentages.

21. If the Work is not being performed in compliance with the Progress Schedule, Owner shall have the right, in addition to any other rights it may have, to: (a) give notice to Contractor

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TERMS AND CONDITIONS

compelling him to perform the Work on an overtime basis (which shall include weekends, if necessary), at no additional cost to Owner, in order to assure that the Substantial Completion Date is met, and Contractor shall promptly comply with any such notice, or (b) assume responsibility for the construction of the Project and Contractor shall be liable to Owner for all damages sustained by Owner as a result of Contractor's failure to comply. In addition, Owner shall have the right to apply amounts previously retained from the Progress Payments to costs incurred by Owner in performing the work. Failure of Owner to exercise its rights pursuant hereto shall not be deemed a waiver thereof, nor prevent Owner from exercising such rights at a latter date. Contractor shall insert in all agreements between Contractor and any Subcontractor a provision whereby the Subcontractor recognizes the right of Owner to assume responsibility for the construction of the Project, with such agreement to continue as direct agreements between Owner and the Subcontractor, and Contractor assigns all Subcontracts to Owner, conditionally, for such purpose.

22. For purposes of the Contract Documents, "punch list items" shall mean minor items of fit and finish which, when considered as a whole, do not adversely affect in any manner Owner's ability to (i) fixture the Project, or (ii) conduct its normal business operations in the Project. No later than seven (7) calendar days after Substantial Completion Contractor shall complete the work on all such punch list items.

23. Punch walks will be scheduled and completed at the end of substantial construction on-site by the Construction Project Manager (CPM). It is expected that a GC representative (preferably the superintendent) be present for this punch walk. Seven (7) calendar days will be an expected turnaround and completion of all items identified. Any extension of time must be in writing and approved by BBBY. At the end of the (7) days (or agreed upon schedule), the CPM will schedule a second punch walk to assess progress and sign-off on the project. If additional punch walks are required to substantiate completion of the punch lists, the GC will be charged \$1,000 per trip as a credit change order against the GC. The project will only be considered complete when the CPM (Construction Project Manager) signs off on the completed punch list.

24. Owner reserves the right to self-perform punch list work without notice to the GC if the GC fails to show or complete any work within the seven (7) day period from given notice. All costs incurred by the owner associated with the punch list will be back charged to the GC and all warranties will remain in effect.

25. **Construction Closeout:** Contractor shall be responsible for submitting the Closeout documents as required by BBB and its representatives in digital form using the services of DRX Works LLC, (formerly Digital Reliance, Inc. (DRI)). All documents shall be uploaded to the DRX Cloud platform within thirty (30) days of "substantial completion". Failure to submit the Closeout requirements in a timely manner results in penalties and a delay in the final payment.

DRX is a BBB National Vendor that provides an online closeout service to facilitate the prompt completion of the GC contractual obligations. The GC is required to pay for the DRX service to secure a cost estimate, send an email to admin@drxworks.com with the store location, store number and type (New Build/Remodel). The GC contact information should also be included. Upon payment of the DRX Invoice, a portal with instructions to upload the Closeout Documents is set up.

DRI will not review Closeout Documents for content. The content will be reviewed and approved by the Construction Project Manager. Final payment will not occur until all closeout documents have been approved by BBB and its representatives.

Any warranty and guarantee provided by Contractor and its subcontractors pursuant to this Agreement shall, at the request of BBB, inure to the benefit of BBB and to any other person or entity designated by BBB. Contractor and its subcontractors shall execute and deliver to BBB such additional documentation reasonably requested by BBB to evidence same, and such obligation shall survive the expiration or earlier termination of this Agreement.

26. Unless otherwise provided herein, all notices, consents or other communications given under this Agreement shall be in writing and shall be deemed given if sent by registered or certified mail, return receipt requested, postage paid, or guaranteed overnight delivery service, or by fax (with copy to follow by one of the other means specified above), if to Contractor, at the address set forth above, and if to BBB, to the address set forth above, Attention Stephen Ehrich, Senior Director of Construction and New Store Development; or to such other persons or addresses as Contractor or BBB may designate by appropriate notice to the other.

27. It is the policy of Owner and its subsidiaries and affiliates to conduct all its business transactions in accordance with the highest ethical standards: No individual who is employed by or who represents Owner is permitted to solicit, accept or pay any bribe, kickback or any other improper payment of money, products or services in exchange for (i) Owner's execution of this Agreement, (ii) any action taken by such individual on behalf of Owner, or (iii) any action taken by a third party. If any such improper actions are observed, please contact our Legal Department (Attention: General Counsel) at 908-688-0888 so that the incident may be fully investigated and appropriate remedial action taken.

28. General Contractor shall follow all Federal, State and Local Government Rules as they apply to COVID 19 safety guidelines. Contractor and all subcontractors shall FULLY wear masks at all times when Bed Bath & Beyond employees are in the store during setting of fixtures and merchandise and completing punch list work while Bed Bath & Beyond employees are present in the store.

(Rev. 02/17/22)

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EXHIBIT A

1. List of Drawings:

Drawings developed by Bed Bath & Beyond (BBB) and by Onyx Creative, entitled "Mission Viejo, CA Project," as follows:

<u>Drawing #</u>	<u>Drawing Title</u>	<u>Revision #</u>	<u>Drawing Date</u>
Architectural Plans:			
A0.1	Cover Sheet	A	02/16/22
A0.2	Life Safety Plan & Notes	A	02/16/22
A0.3	Accessibility Standards	A	02/16/22
A0.4	Accessibility Standards	A	02/16/22
A0.5	Container Plan	A	02/16/22
A1.0	Fixture Plan	A	02/16/22
A1.1	Door & Hardware Schedules	A	02/16/22
A2.0	Office / Restroom / Vestibule / Entry Plans	A	02/16/22
A3.1	Floor Finish Plan, Schedule & Details	A	02/16/22
A3.2	Interior Elevations & Details	A	02/16/22
A3.2A	Interior Elevations	A	02/16/22
A4.1	Exterior Elevations & Details	A	02/16/22
A4.2	Exterior Elevations	A	02/16/22
A6.0	High Pile Storage Plan	A	02/16/22
A8.1	Screening, Sneeze Guards & Register Bay Details	A	02/16/22
A8.2	Hub Desk Detail	A	02/16/22
A8.3	Hub Desk Bench & Printer Bunker Details	A	02/16/22
A8.4	Bopis Millwork Details	A	02/16/22
A8.9	Specifications	A	02/16/22
A8.10	Specifications	A	02/16/22
Electrical Plans:			
ED1.1	Power & Lighting Demolition Plan	A	02/16/22
E3.0	Power, Specialty Lighting Plan & Notes	A	02/16/22
E3.1	Power, Specialty Lighting Details	A	02/16/22
E3.2	CWS Millwork Electrical Detail	A	02/16/22
E4.0	Lighting Floor Plan & Notes	A	02/16/22

EXHIBIT 2

CONFORMED COPY

Recording requested by: Davaco Inc.

When recorded mail to:

Jessica R. Bogo, Esq,
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

 97.00
* \$ R 0 0 1 4 0 5 2 7 3 6 \$ *

2022000357901 1:29 pm 11/08/22

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CLAIM OF LIEN

NOTICE IS HEREBY GIVEN: The undersigned claimant **DAVACO INC.**, 4050 Valleyview Lane, Suite 150 Irving, TX 75038, claims a mechanics lien for labor, services, equipment, and/or materials under California Civil Code Section 8416 et seq., upon the premises hereinafter described, and upon every estate or interest in such structures, improvements and premises held by any party holding any estate therein.

The labor, services, equipment, and/or materials, were furnished for the construction of those buildings, improvements, or structures, now upon that certain parcel of land situated in the County of Orange, State of California, said land described as follows: 25732 El Paseo, Mission Viejo, CA 92691, APN: 784-661-42 ("Property").

The sum of \$343,380.00, together with interest at the highest rate permitted by law, is due Claimant (after deducting all just credits and offsets).

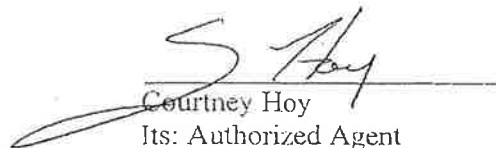
The lien is claimed for the following labor, services, equipment and materials: interior and exterior remodel of the above-described Property.

Claimant furnished the work and/or materials at the request of, or under contract with the owner(s) or reputed owner(s) of the Property: Bed Bath & Beyond, Inc., 650 Liberty Avenue Union, New Jersey 07083.

Date: November 4, 2022

CLAIMANT:

DAVACO INC.

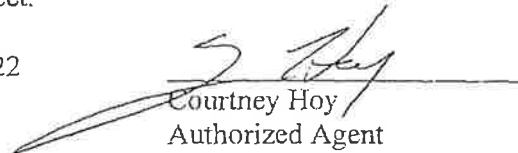

Courtney Hoy
Its: Authorized Agent

VERIFICATION

I am the claimant's agent authorized to make this verification on the claimant's behalf and the foregoing Claim of Lien is true of my own knowledge, except for matters stated in it on my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 4, 2022


Courtney Hoy
Authorized Agent

NOTICE OF MECHANIC'S LIEN

ATTENTION!

Upon the recording of the enclosed MECHANIC'S LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanic's lien is recorded.

The party identified in the mechanic's lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanic's lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanic's lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANIC'S LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

AFFIDAVIT FOR SERVICE ON THE OWNER
California Civil Code Section 8416

I, Maria Gonzalez, declare that on November ___, 2022 I served a copy of this Mechanic's Lien, including the Notice of Mechanic's Lien, by registered mail, certified mail, or first-class mail evidenced by a certificate of mailing, postage prepaid, addressed as follows to the owner(s) or reputed owner(s) of the property:

Company/Person served: Bed Bath & Beyond, Inc.
Title or capacity of person served (if appropriate): Owner
Service Address: 650 Liberty Avenue Union, New Jersey 07083

Said service address is the owner's residence, place of business, or address shown by the building permit on file with the permitting authority for the work.

Executed on November 7, 2022 at San Francisco, California.

By: Maria M Gonzalez
Maria Gonzalez

Electronically Filed by Superior Court of California, County of Orange, 01/19/2023 10:15:38 PM.
30-2023-01303137-CU-MC-CJC - ROA # 3 - DAVID H. YAMASAKI, Clerk of the Court By A. Van Arkel, Deputy Clerk CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John R. Heisse (Bar No. 134964) Jessica R. Bogo (Bar No. 275772) PILLSBURY WINTHROP SHAW PITTMAN LLP Four Embarcadero Center, 22nd Floor San Francisco, CA 94111-5998 TELEPHONE NO.: (415) 983-1000 FAX NO. (Optional): (415) 983-1200 E-MAIL ADDRESS: john.heisse@pillsburylaw.com; jessica.bogo@pillsburylaw.com ATTORNEY FOR (Name): Plaintiff DAVACO INC.		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: Orange County Superior Court MAILING ADDRESS: 700 Civic Center Drive West CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center		
CASE NAME: DAVACO INC. v. BED BATH & BEYOND, INC., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2023-01303137-CU-MC-CJC Assigned for All Purposes to: JUDGE: Judge Melissa R. McCormick DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case: Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3,740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): TWO
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: January 19, 2023

JESSICA R. BOGO

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 W. Civic Center DRIVE MAILING ADDRESS: 700 W. Civic Center Drive CITY AND ZIP CODE: Santa Ana 92701 BRANCH NAME: Central Justice Center PLANTIFF: Davaco Inc.	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE Jan 24, 2023 Clerk of the Superior Court By: A. VAN ARKEL, Deputy
DEFENDANT: Bed Bath & Beyond, Inc. et.al.	
Short Title: DAVACO INC. VS. BED BATH & BEYOND, INC.	
NOTICE OF HEARING CASE MANAGEMENT CONFERENCE	CASE NUMBER: 30-2023-01303137-CU-MC-CJC

Please take notice that a(n), Case Management Conference has been scheduled for hearing on 06/29/2023 at 09:00:00 AM in Department C13 of this court, located at Central Justice Center.

Plaintiff(s)/Petitioner(s) to provide notice to all defendant(s)/respondent(s). Parties who file pleadings that add new parties to the proceeding must provide notice of the Case Management Conference to the newly added parties.

IMPORTANT: Prior to your hearing date, please check the Court's website for the most current instructions regarding how to appear for your hearing and access services that are available to answer your questions.

Civil Matters - <https://www.occcourts.org/media-relations/civil.html>

Probate/Mental Health - <https://www.occcourts.org/media-relations/probate-mental-health.html>

Appellate Division - <https://www.occcourts.org/media-relations/appeals-records.html>

IMPORTANTE: Antes de la fecha de su audiencia, visite el sitio web de la Corte para saber cuáles son las instrucciones más actuales para participar en la audiencia y tener acceso a los servicios disponibles para responder a sus preguntas.

Casos Civiles - <https://www.occcourts.org/media-relations/civil.html>

Casos de Probate y Salud Mental - <https://www.occcourts.org/media-relations/probate-mental-health.html>

División de apelaciones - <https://www.occcourts.org/media-relations/appeals-records.html>

QUAN TRỌNG: Trước ngày phiên tòa của quý vị, vui lòng kiểm tra trang mạng của tòa án để biết những hướng dẫn mới nhất về cách ra hầu phiên tòa của quý vị và tiếp cận những dịch vụ hiện có để giải đáp những thắc mắc của quý vị.

Vấn Đề Dân Sự - <https://www.occcourts.org/media-relations/civil.html>

Thủ Tục Di Chúc/Sức Khỏe Tinh Thần - <https://www.occcourts.org/media-relations/probate-mental-health.html>

Ban phúc thẩm - <https://www.occcourts.org/media-relations/appeals-records.html>

Clerk of the Court, By:  , Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE


Central Justice Center
700 W. Civic Center DRIVE
Santa Ana 92701

SHORT TITLE: DAVACO INC. VS. BED BATH & BEYOND, INC.

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
30-2023-01303137-CU-MC-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Notice of Hearing has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practices and addressed as indicated below. The certification occurred at Santa Ana, California, on 01/24/2023. Following standard court practice the mailing will occur at Sacramento, California on 01/25/2023.

Clerk of the Court, by: 

, Deputy

PILLSBURY WINTHROP SHAW PITTMAN LLP
FOUR EMBARCADERO CENTER, 22ND FLOOR
SAN FRANCISCO, CA 94111

CLERK'S CERTIFICATE OF SERVICE BY MAIL

Page: 2

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 01/25/2023 TIME: 07:27:00 AM DEPT: C13

JUDICIAL OFFICER PRESIDING: Melissa R. McCormick

CLERK: E. Yu

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2023-01303137-CU-MC-CJC** CASE INIT.DATE: 01/19/2023

CASE TITLE: **Davaco Inc. vs. Bed Bath & Beyond, Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT ID/DOCUMENT ID: 73936849

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Case Management Conference currently set on 06/29/2023 is ordered advanced to 04/20/2023 at 09:00 AM in C13.

Clerk to give notice to Plaintiff and Plaintiff to give notice to all other parties.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: Davaco Inc. vs. Bed Bath & Beyond, Inc.	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: 30-2023-01303137-CU-MC-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 01/25/23, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on January 25, 2023, at 7:48:48 AM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

PILLSBURY WINTHROP SHAW PITTMAN LLP
JESSICA.BOGO@PILLSBURYLAW.COM

PILLSBURY WINTHROP SHAW PITTMAN LLP
JOHN.HEISSE@PILLSBURYLAW.COM

Clerk of the Court, by:



, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

Electronically Filed by Superior Court of California, County of Orange, 02/07/2023 03:56:00 PM.
30-2023-01303137-CU-MC-CJC - ROA # 12 - DAVID H. YAMASAKI, Clerk of the Court By E. efilnguser, Deputy Clerk.

PILLSBURY WINTHROP SHAW PITTMAN LLP
JOHN R. HEISSE (Bar No. 134964)
john.heisse@pillsburylaw.com
JESSICA R. BOGO (Bar No. 275772)
jessica.bogo@pillsburylaw.com
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
Telephone: 415.983.1000
Facsimile: 415.983.1200

Attorneys for Plaintiff
DAVACO INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

DAVACO INC., a Texas corporation;
Plaintiff,

vs.

BED BATH & BEYOND, INC., a New York
corporation; TRIPLE B MISSION VIEJO, LLC,
a Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2023-01303137-CU-MC-CJC

**ASSIGNED FOR ALL PURPOSES TO
JUDGE MELISSA R. MCCORMICK**

**NOTICE OF PENDING ACTION
(*Lis Pendens*)**

Complaint Filed: January 19, 2023

PLEASE TAKE NOTICE that a lawsuit concerning and affecting title and/or possession to
real property as described herein was commenced in the above-captioned court on January 19, 2023
and is now pending between Plaintiff Davaco Inc. and Defendants Bed Bath & Beyond, Inc., Triple
B Mission Viejo, LLC, and Does 1 through 50, inclusive.

The operative Complaint alleges a claim affecting real property, to wit enforcement of a
Mechanic's Lien recorded on November 8, 2022, against real property located at 25732 El Paseo,
Mission Viejo, CA 92691, including but not limited to the following Orange County Assessor Parcel
Information Number: 784-661-42.

1
NOTICE OF PENDING ACTION (*LIS PENDENS*)

4859-9558-4847

1 A copy of the Proof of Service is attached hereto and incorporated herein by reference.

2
3 Dated: February 6, 2023

PILLSBURY WINTHROP SHAW PITTMAN LLP

4
5 By: 
JOHN R. HEISSE
JESSICA R. BOGO

6 Attorneys for Plaintiff
7 DAVACO INC.
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PROOF OF SERVICE

I, **Yvonne Chen** the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the County of San Francisco, State of California.

2. My email and business address are **yvonne.chen@pillsburylaw.com**; Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998.

3. My mailing address is P. O. Box 2824, San Francisco, CA 94111-5998.

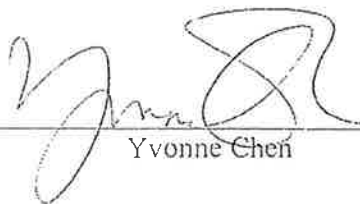
4. On February 6, 2023, I served the document(s) titled exactly **NOTICE OF PENDING ACTION** (*Lis Pendens*) on the following recipients:

BED BATH & BEYOND INC.
C T Corporation System
Attn: Amanda Garcia or Any Other Authorized Employee
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

TRIPLE B MISSION VIEJO, LLC
Richards Watson & Gershon
Attn: Saul Jaffe
333 South Hope Street
Los Angeles, CA 90071

☒ (BY CERTIFIED MAIL) I caused each envelope, with postage thereon fully prepaid and certified-return receipt requested, to be placed in the United States mail at San Francisco, CA. I am readily familiar with the practice of Pillsbury Winthrop Shaw Pittman LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of February, 2023, at San Francisco, California.


Yvonne Chen

RECORDING REQUESTED BY: CONFIRMED COPY

NAME: DAVACO INC.

WHEN RECORDED MAIL TO:

NAME: JESSICA R. BOGO, ESQ.; PWSP LLP

ADDRESS: Four Embarcadero Center, 22nd Floor

CITY/STATE/ZIP: San Francisco, CA 94111-5998

(DOCUMENT WILL ONLY BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE)

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder



91.00

* \$ R 0 0 1 4 1 8 9 0 9 2 \$ *
2023000026845 1:10 pm 02/07/23

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(SPACE ABOVE FOR RECORDER'S USE)

NOTICE OF PENDING ACTION (Lis Pendens)

(DOCUMENT TITLE)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.

(2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.

(3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its website as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. Nonbinding arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, at 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the telephone directories under "Arbitrators" or "Mediators"

Low cost mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding DRPA, contact:

- OC Human Relations (714) 480-6575, mediator@ochumanrelations.org
- Waymakers (949) 250-4058

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of \$300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of \$300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) programs is available on the Court's website at www.occourts.org.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY For your protection and privacy, please press the Clear This Form button after you are done printing this form.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: <input type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 <input type="checkbox"/> Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512 <input type="checkbox"/> Harbor - Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 <input type="checkbox"/> North - 1275 N. Berkeley Ave., P.O. Box 5000, Fullerton, CA 92838-0500 <input type="checkbox"/> West - 8141 13 th Street, Westminster, CA 92683-4593	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION	CASE NUMBER:

Plaintiff(s)/Petitioner(s), _____

and defendant(s)/respondent(s), _____

agree to the following dispute resolution process:

☐ Mediation

☐ Arbitration (must specify code)

- ☐ Under section 1141.11 of the Code of Civil Procedure
☐ Under section 1280 of the Code of Civil Procedure

☐ Neutral Case Evaluation

The ADR process must be completed no later than 90 days after the date of this Stipulation or the date the case was referred, whichever is sooner.

☐ I have an Order on Court Fee Waiver (FW-003) on file, and the selected ADR Neutral(s) are eligible to provide pro bono services.


☐ The ADR Neutral Selection and Party List is attached to this Stipulation.

We understand that there may be a charge for services provided by neutrals. We understand that participating in an ADR process does not extend the time periods specified in California Rules of Court, rule 3.720 et seq.

Date: _____ (SIGNATURE OF PLAINTIFF OR ATTORNEY) (SIGNATURE OF PLAINTIFF OR ATTORNEY)

Date: _____ (SIGNATURE OF DEFENDANT OR ATTORNEY) (SIGNATURE OF DEFENDANT OR ATTORNEY)

ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION

	Secretary of State Statement of Information (Limited Liability Company)	LLC-12	22-B66507 FILED In the office of the Secretary of State of the State of California MAR 16, 2022 This Space For Office Use Only
IMPORTANT — This form can be filed online at bizfile.sos.ca.gov . <u>Read instructions before completing this form.</u> Filing Fee - \$20.00 Copy Fees - First page \$1.00; each attachment page \$0.50; Certification Fee - \$5.00 plus copy fees			
1. Limited Liability Company Name (Enter the exact name of the LLC. If you registered in California using an alternate name, <u>see instructions</u> .) TRIPLE B MISSION VIEJO, LLC			
2. 12-Digit Secretary of State Entity Number 199917310001		3. State, Foreign Country or Place of Organization (only if formed outside of California) DELAWARE	

4. Business Addresses

a. Street Address of Principal Office - Do not list a P.O. Box One Bridge Plaza N STE 660	City (no abbreviations) Fort Lee	State NJ	Zip Code 07024
b. Mailing Address of LLC, if different than item 4a One Bridge Plaza N STE 660	City (no abbreviations) Fort Lee	State NJ	Zip Code 07024
c. Street Address of California Office, if Item 4a is not in California Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

5. Manager(s) or Member(s)

If no managers have been appointed or elected, provide the name and address of each member. At least one name and address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an additional managers/members, enter the names(s) and address(es) on Form LLC-12A.

a. First Name, if an individual - Do not complete Item 5b William	Middle Name	Last Name Mack	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address One Bridge Plaza N STE 660	City (no abbreviations) Fort Lee	State NJ	Zip Code 07024

6. Service of Process (Must provide either Individual **OR** Corporation.)

INDIVIDUAL – Complete Items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) Saul	Middle Name	Last Name Jaffe- Richards Watson G	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 333 South Hope Street	City (no abbreviations) Loa Angeles	State CA	Zip Code 90071

CORPORATION – Complete Item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 6a or 6b

7. Type of Business

Describe the type of business or services of the Limited Liability Company Real Estate Investment
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8. Chief Executive Officer, if elected or appointed


a. First Name	Middle Name	Last Name	Suffix
b. Address	City (no abbreviations)	State	Zip Code

9. Labor Judgment

Does a Manager or Member have an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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10. By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.

03/16/2022 David Mack Manager
Date Type or Print Name Title Signature

 Attachment to Statement of Information (Limited Liability Company)	LLC-12A Attachment	22-B66507
A. Limited Liability Company Name TRIPLE B MISSION VIEJO, LLC		
This Space For Office Use Only		
B. 12-Digit Secretary of State File Number 199917310001	C. State or Place of Organization (only if formed outside of California) DELAWARE	

D. List of Additional Manager(s) or Member(s) - If the manager/member is an individual, enter the individual's name and address. If the manager/member is an entity, enter the entity's name and address. Note: The LLC cannot serve as its own manager or member.

First Name David	Middle Name	Last Name Mack	Suffix
Entity Name			
Address One Bridge Plaza N STE 660		City (no abbreviations) Fort Lee	State NJ Zip Code 07024
First Name Earle	Middle Name	Last Name Mack	Suffix
Entity Name			
Address One Bridge Plaza N STE 660		City (no abbreviations) Fort Lee	State NJ Zip Code 07024